

GAO

Testimony

Before the Subcommittee on Immigration and Refugee Affairs,
Committee on the Judiciary, U.S. Senate

For Release on Delivery
Expected at
10:00 a.m., EST
April 3, 1992

IRCA-RELATED DISCRIMINATION

Actions Have Been Taken to Address IRCA-Related Discrimination, but More Is Needed

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ACTIONS BEING TAKEN TO ADDRESS
IRCA-RELATED DISCRIMINATION

SUMMARY OF STATEMENT OF
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The Immigration Reform and Control Act of 1986 (IRCA) requires all employers to complete an Employment Eligibility Verification Form for each new employee. Any one of 18 different documents, for example a social security card, can be used to establish work eligibility. Seven of the documents are authorized by law and 11 are authorized by regulations. The law prohibits employers from discriminating against eligible workers on the basis of a person's national origin or citizenship status. The law established the Office of the Special Counsel for Immigration-Related Unfair Employment Practices (OSC) to investigate charges and prosecute IRCA-related discrimination complaints.

In its report, Immigration Reform: Employer Sanctions and the Question of Discrimination (GAO/GGD-90-62, March 29, 1990), GAO found IRCA-related discrimination to be serious enough to require the immediate attention of Congress and the administration. GAO recommended (1) reducing the number of work eligibility documents, and (2) making the documents more counterfeit-resistant and less vulnerable to fraudulent use. In subsequent testimony we supported establishing regional offices for the Department of Justice's Office of Special Counsel.

IRCA required the Attorney General to establish a task force to review GAO's report and recommend legislation to deter or remedy any widespread IRCA-related discrimination GAO found. Without making its own assessment, the task force took GAO's discrimination findings as a starting point and recommended actions to deter discriminatory practices. The Immigration Act of 1990 contained provisions to reduce discrimination that addressed some of the task force's recommendations and GAO's recommendation to educate the nation's employers. The provisions did not address the need to (1) reduce the number of work authorization documents and their vulnerability to being counterfeited or fraudulently used, and (2) increase antidiscrimination enforcement by establishing OSC regional offices.

In fiscal years 1990 and 1991, OSC funded over \$2 million in grants to educate employers and employees about IRCA's antidiscrimination provisions. In fiscal year 1992, OSC has about \$4 million available for education. INS efforts to reduce the number of work authorization documents have been limited because of funding constraints. INS has made some work authorization documents more counterfeit-resistant and less vulnerable to fraudulent use.

The increased educational efforts coupled with the 1990 act should help address IRCA-related discrimination. However, GAO believes that to significantly reduce discrimination, education must be carried out in concert with reducing the number of work authorization documents, improving their security, and increasing antidiscrimination enforcement.

Mr. Chairman and Members of the Subcommittee:

Thank you for your invitation to discuss recent efforts to address discrimination related to the Immigration Reform and Control Act of 1986 (IRCA). Specifically, my comments will focus on (1) our report¹ and recommendations of the Task Force on IRCA-Related Discrimination, (2) the provisions to address discrimination in the Immigration Act of 1990 (P.L. 101-649, Nov. 29, 1990), and (3) the Department of Justice's initiatives to address IRCA-related discrimination.

In brief, GAO--and subsequently the task force--proposed three essentially identical steps that were needed to address IRCA-related discrimination. Employers need to be educated, the number of work eligibility documents needs to be reduced, and greater emphasis needs to be placed on antidiscrimination enforcement by establishing regional offices. Over the past 2 years, the Departments of Justice and Labor have expended substantial resources to educate employers. However, (1) the number of work eligibility documents has not been reduced, and (2) regional offices to help carry out antidiscrimination enforcement for the Office of the Special Counsel for Immigration-Related Unfair Employment Practices (OSC) have not been established.

BACKGROUND

During the 1970s and 1980s, Congress became increasingly concerned about the escalating rate of illegal immigration. After intense debate, Congress passed IRCA, which requires all employers to examine identity and work authorization documentation to verify each newly hired employee's eligibility to work in the United States. The employer and the newly hired employee are then to complete an Employment Eligibility Verification Form (I-9). New employees can use any of 18 different documents (see attachment), such as a social security card, to establish their eligibility to work. Seven of these documents are authorized by IRCA, and 11 are authorized by regulations. The law authorizes Immigration and Naturalization Service (INS) and Department of Labor officials to inspect employer verification forms and provides for civil penalties if employers knowingly hire or continue to employ unauthorized aliens or do not comply with the law's employment eligibility verification procedures.

Congress was concerned that the system of verification and sanctions might lead employers to discriminate against "foreign-appearing" U.S. citizens, including Puerto Ricans and aliens who were authorized to work. As a result of this concern, Congress included a provision in the law prohibiting employers

¹Immigration Reform: Employer Sanctions and the Question of Discrimination (GAO/GGD-90-62, Mar. 29, 1990).

with four or more employees from discriminating against authorized workers on the basis of their national origin or citizenship status. It also established a new unit within Justice--the Office of the Special Counsel--to investigate charges and prosecute complaints alleging IRCA-related discrimination. IRCA also provided Congress with an option to repeal sections of the law related to employer sanctions and discrimination if we determined that a widespread pattern of discrimination resulted solely from the implementation of employer sanctions.

In March 1990, we reported that 19 percent of the employers in our survey engaged in national origin or citizenship discrimination against authorized workers. We attributed this discrimination to (1) confusion and uncertainty about how to determine work eligibility, (2) lack of understanding of the law's major provisions, and (3) the prevalence of fraudulent and counterfeit documents used to verify work eligibility. These findings, as they related to national origin discrimination, were further supported by our hiring audit in which matched pairs of Anglos and Hispanics applied for entry-level positions. We reported that the Hispanic testers were 3 times more likely to encounter unfavorable treatment. We concluded that the discrimination we reported was serious enough to require immediate attention by Congress and the administration. We believed that the level of discrimination we reported could be significantly reduced if IRCA's verification system were simplified and employers were educated about the revised system.

During hearings on our report before this committee in March 1990, we testified that we did not advocate repealing IRCA's employer sanction and antidiscrimination provisions.² Concluding that the main cause of the discrimination was employer confusion arising from the multiplicity of acceptable work authorization documents, we favored retaining sanctions, subject to simplifying the employment eligibility verification system. We recommended three actions to simplify the system and reduce discrimination: (1) reduce the number of work eligibility documents, (2) make the documents more counterfeit-resistant and less vulnerable to fraudulent use, and (3) apply any new work eligibility documents to all members of the workforce. In addition, we recommended that the Attorney General direct OSC to increase the government's efforts to educate the nation's employers--particularly employers in areas with high Hispanic and Asian populations--on how to comply with IRCA's antidiscrimination provision.

²Immigration Reform: Employer Sanctions and the Question of Discrimination (GAO/T-GGD-90-31, Mar. 30, 1990)

IRCA required the Attorney General, the Chairman of the U.S. Commission on Civil Rights, and the Chairman of the Equal Employment Opportunity Commission (EEOC) to form a task force to review our report and to recommend any legislation that might be appropriate to deter or remedy any widespread pattern of IRCA-related discrimination we found. In response to our report, the task force made a number of recommendations, many of which were reflected in provisions of the 1990 act. These provisions of the act should help combat IRCA-related discrimination.

TASK FORCE REPORT

After reviewing our report, the task force issued its report in September 1990. Without making its own assessment, it took our discrimination findings as a starting point and recommended efforts to deter discriminatory practices be carried out in three areas.

- First, the task force recommended strengthening IRCA-related antidiscrimination enforcement. To do this, it recommended that (1) OSC establish regional offices in areas with the greatest incidence of IRCA-related discriminatory practices and (2) Labor be given a greater range of authority to enforce IRCA.
- Second, the task force recommended that the process by which an employer checks an employee's documents should be clarified and simplified. It recommended a number of steps to make the process clearer and easier for both employers and employees, including limiting the number of documents that can be used to establish work eligibility.
- Third, the task force recommended that greater efforts be made to educate employers and authorized workers about the specific provisions of the law. It recommended that the lead agencies involved in IRCA enlist the assistance of other agencies and organizations--at the federal, state, and local level--to help achieve a greater understanding of the law.

Consistent with our position, the task force described the educational efforts as a critical corollary to document-reduction efforts. It anticipated that any nationwide education effort would be carried out in concert with a reduction in the number of documents used to establish work eligibility.

THE IMMIGRATION ACT OF 1990

The Immigration Act of 1990 included provisions to address IRCA-related discrimination and authorized \$10 million to carry them out. The act incorporated many but not all of the task force's recommendations and our recommendation regarding efforts to educate the nation's employers.

The 1990 act requires OSC, in cooperation with EEOC, Labor, and the Small Business Administration, to disseminate information regarding unfair immigration-related employment practices. Further, the 1990 act

- treats as discriminatory the practice of asking for more or different documents than required;
- prohibits using intimidation, threat, coercion, or retaliation against a person covered under IRCA;
- includes certain seasonal agricultural workers within the scope of the antidiscrimination protections; and
- eliminates the requirement that an alien file a declaration of intent to become a citizen in order to file an antidiscrimination complaint.

In addition, the 1990 act (1) conforms the civil penalties for antidiscrimination violations to those for employer sanctions, (2) extends the filing period for OSC complaints, and (3) provides OSC with access to I-9 forms. The 1990 act also provides for increased education about IRCA's antidiscrimination requirements.

Some of the task force's and GAO's recommendations were not addressed. Both GAO and the task force anticipated that any major antidiscrimination education effort would be associated with a reduced number of work authorization documents; however, the 1990 act did not address this interrelationship. Although the 1990 act authorizes \$10 million annually to carry out antidiscrimination education efforts, it did not specifically provide for document reduction. During the debate on the 1990 act, Congress considered establishing a pilot program to create a counterfeit-resistant driver's license that could be used to establish work authorization. This provision was not included in the act.

JUSTICE AND LABOR ACTIONS TO REDUCE IRCA-RELATED DISCRIMINATION

Justice has recognized the need to continue educating workers and employers about IRCA's antidiscrimination provision. It established internal coordinating mechanisms and plans to reduce the number of work authorization documents. In addition, Labor also provides antidiscrimination information to employers and authorized workers. However, some of Justice's antidiscrimination efforts have been hampered by funding constraints.

Justice's Coordinating Efforts

In March 1989, the Attorney General established an intradepartmental task force to coordinate the government's activities in combating discrimination related to employer sanctions. In March 1991, the Attorney General convened an intradepartmental working group to implement the task force recommendations that fell within Justice's authority. Further, he added the Assistant Attorney General for Civil Rights to the previously established intradepartmental working group.

OSC's Education and Enforcement Role

The Immigration Act of 1990 gave the Office of Special Counsel responsibility for educating employers about IRCA-related discrimination. In fiscal year 1990, OSC funded \$1 million in grants to 15 different groups to educate employers and employees about IRCA's antidiscrimination provision. Two-thirds of the grantees were located in the states we identified as having greater discrimination problems--California, Florida, New York, and Texas. In fiscal year 1991, OSC expended about \$1.3 million. For fiscal year 1992, OSC has \$4 million available for educational outreach activities.

In June 1990, we supported the creation of regional offices for OSC to help carry out antidiscrimination enforcement.³ In addition, the IRCA task force recommended that OSC establish a minimum of three regional offices. To date, Congress has not provided funding to establish these offices. According to OSC, each regional office would cost about \$1 million.

INS Education and Document Improvement Efforts

INS has continued its antidiscrimination education activities. In fiscal years 1990 and 1991, INS spent about \$1.6 million to educate employers about IRCA's antidiscrimination provisions. The activities included (1) funding local and national media campaigns and (2) revising the I-9 form and the employer handbook, which explains how to comply with IRCA employment eligibility requirements. In November 1991, INS mailed 6.2 million new employer handbooks and I-9 forms to employers nationwide. For fiscal year 1992, Justice proposed a \$6.3 million increase--from \$5 million to \$11.3 million--for INS to expand its antidiscrimination education activities. The Office of Management and Budget declined to include the additional \$6.3 million in the President's fiscal year 1992 budget but maintained the previous year's funding at \$5 million.

³IRCA Anti-Discrimination Amendments of 1990 (GAO/T-GGD-90-51, June 27, 1990).

Our work suggested that discrimination could be effectively reduced by decreasing the number of work eligibility documents and making them harder to counterfeit, thereby reducing document fraud. Since 1988, INS has consistently advocated reducing the number of work authorization documents and still expects to reduce the number of INS-issued documents⁴ used to prove work authorization from 12 to 2 or 3. For example, INS planned to replace a variety of temporary work authorization documents with one document. INS is now issuing the new replacement document, but it has not recalled the older documents because funding has not been provided for this purpose. Since the old temporary work authorization documents can still be used to establish work authorization, the number of INS-issued documents that can be used for this purpose has increased from 11 to 12.

INS has taken action to improve the security of the alien registration receipt card (commonly referred to as the "green card") and the employment authorization document.

In our March 1990 report, we said that the old version of the green card was the most frequently counterfeited INS-issued document. In February 1992, Justice authorized INS to reprogram \$10 million to begin the process of replacing the old version of the green card with a more secure version. For fiscal year 1993, Justice approved \$36 million to complete the replacement of these cards. INS estimates that replacing the old 1.5 million green cards will take about 2 years and plans to charge aliens \$70 per card for the replacements.

INS estimates there are about 6.5 million green cards that have security features but were issued without an expiration date. INS plans to further enhance the security of these newer green cards by replacing them with cards that have an expiration date. INS expects it will take 10 years to replace these cards.

INS is currently issuing a new employment authorization document that is more counterfeit-resistant and less vulnerable to fraudulent use. This card is provided to authorized workers who have temporary work authorization.

Labor's Educational Efforts

The Department of Labor has continued its antidiscrimination activities. As part of its enforcement efforts, Labor provides employers and authorized workers with information about IRCA, including its antidiscrimination provision. In fiscal years 1990 and 1991, Labor visited about 85,000 employers.

⁴The primary purpose of the documents is to establish the alien's immigration status.

CONCLUSIONS

In our opinion, the changes in the 1990 act should help address the IRCA-related discrimination we identified. However, we believe that to significantly reduce discrimination, education must be carried out in concert with the Attorney General taking action to (1) reduce the number of work authorization documents and make them more counterfeit-resistant and less vulnerable to fraudulent use and (2) increase antidiscrimination enforcement by establishing OSC regional offices.

In our 1990 testimony, we did not support repealing IRCA. We continue to believe that more time is needed to test the benefits of a more thorough implementation of the task force's recommendations that were incorporated in the 1990 act and to simplify the employment eligibility verification system.

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Mr. Chairman, that concludes my prepared statement. We would be pleased to respond to questions.

DOCUMENTS THAT ESTABLISH WORK AUTHORIZATIONAuthorized by Statute

1. U.S. passport
2. Certificate of U.S. Citizenship (INS Forms N-560 and N-561)
3. Certificate of Naturalization (INS Forms N-550 and N-570)
4. Unexpired foreign passport that includes an unexpired work authorization document (various documents)
5. Alien Registration Receipt Card (INS Form I-151) or Resident Alien Card (INS Form I-551)
6. Social security card
7. Birth certificate issued by a state, county, or municipal authority (various documents)

Authorized by Regulation

8. Unexpired Temporary Resident Card (INS Form I-688)
9. Unexpired Employment Authorization Card (INS Form I-688A)
10. Unexpired Re-Entry Permit (INS Form I-327)
11. Unexpired Refugee Travel Document (INS Form I-571)
12. U.S. Citizen Identification Card (INS Form I-197)
13. Resident Citizen Identification Card (INS Form I-179)
14. Unexpired Employment Authorization Card with a photograph (INS Form I-688B)
15. Unexpired employment authorization document (various INS documents)
16. Certificate of birth issued by the State Department (Form FS-545)
17. Certificate of birth abroad Issued by the State Department (Form DS-1350)
18. Native American tribal document (various documents)

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